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ABSTRACT

This report to the United Nations Committee on the Rights of the Child contains observations of the World Organisation Against Torture (OMCT) concerning the application of the U.N. Convention on the Rights of the Child by the country of Nepal. The report's introductory summary asserts that although the Nepal government's passage of the Act to Provide for Safeguarding the Interests of Children 1992 is an improvement on past legislation, OMCT is very concerned that very little of this act has actually come into force. The report then presents observations and recommendations in the following areas: (1) current legislative and de facto problems with the "chastisement" of children; (2) current problems with legislation and practice of torture; (3) concern for the treatment of mentally disturbed children; (4) practice and legislation concerning rape and the girl child; (5) serious problems concerning children in the laws to protect forests; (6) children in detention and prison; (7) concerns over sanctions against child offenders; (8) Tibetan refugees; and (9) child soldiers. The report concludes with a summary of observations and recommendations by the U.N. Committee on the Rights of the Child--Nepal, in the following areas: positive factors, factors and difficulties impeding the implementation of the convention, principal subjects of concern, and suggestions and recommendations. (EV)

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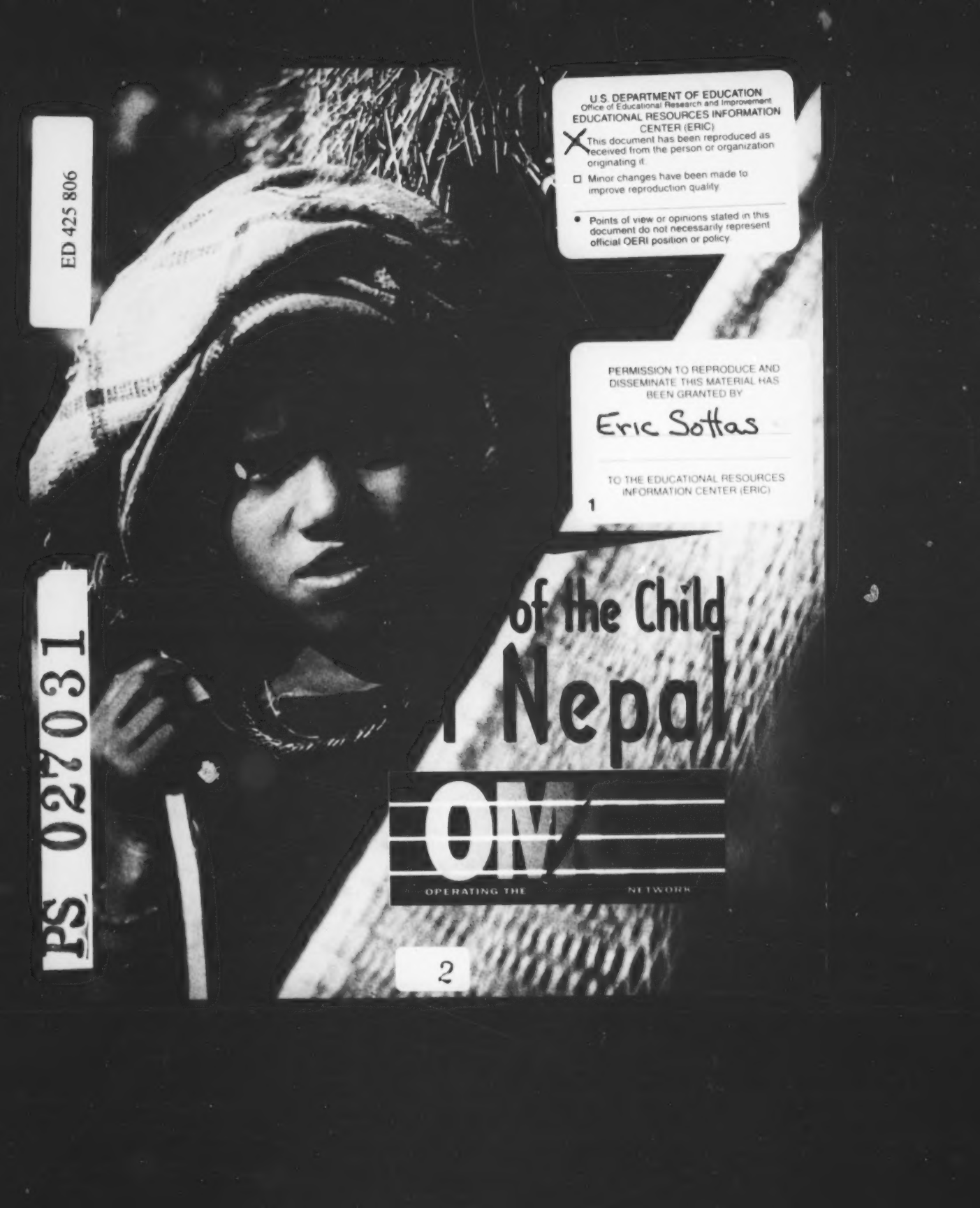
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# Rights of the Child in Nepal

OMC

OPERATING THE SOS-TORTURE NETWORK

**Particular thanks to**

**Dr Boghendra Sharma**
**and Dr Gayendra Sharma of CVICT**

**Gopal Siwakoti of INHURED**
**INTERNATIONAL**

**Laura Theytaz Bergman,**
**Ngo coordinator for the Committee**
**on the Rights of the Child**

The restoration of multipartism and the advent of democracy in 1990 have created an opportunity for change in Nepal. The International Secretariat of OMCT welcomes the efforts undertaken by the Government to improve the rights of the Child and human rights generally.

The Government ratified the Convention on the Rights of the Child (CRC) on the 14th of September 1990 and adopted legislative, administrative and other measures with a view to incorporating the rules of the Convention in its legislation.

The Nepali government has also signed various international instruments which include clauses for the safeguard of the principles of the CRC.

The principal domestic legislative instrument passed by the Government of Nepal in terms of children's rights has been the Act to Provide for Safeguarding the Interests of Children 1992 (referred to throughout this paper equally as The Children's Act).

Whilst flawed, this act, as will be seen, is an improvement on past legislation which offer almost no protection to children.

However, whilst welcoming this legislative measure, OMCT is very concerned that very little of this act has actually come into force.

This non implementation necessitates observations on other legislation, currently in force and will principally concentrate on substantive issues raised by the Maluki Ain (Civil Code) of Nepal.

Otherwise, the focus of this paper, as with other OMCT reports, will concentrate on the disparities between domestic legislation and practice, articles 37 and 40 of The Convention on the Rights of the Child and the Government report presented to the Committee.

# Current Legislative and De Facto Problems with the "Chastisement" of Children

The current situation: The use of violence as a pedagogical tool by family and teachers alike, is extremely common in Nepal. It was clear during the field visit of OMCT of October that most of the interviewees had personal recollections of extreme brutality on the part of teachers.

The educational establishment relies heavily on physical punishment as a means of maintaining order in the classroom. Violence is used on extremely slight pretexts. Legislative provisions moreover, would seem not only to encourage brutality but also, effectively protect the guardian or teacher from any serious sanction should such beatings result in serious injury or even death.

OMCT is particularly concerned that:

1. *The Act to Provide for Safeguarding the Interests of Children 1992 allows for the beating of children "for their own good";*
2. *That if the child is severely injured by such a beating that the perpetrator will not be held responsible;*
3. *That if the child is killed by such a beating the punishment is derisory;*
4. *That the lack of legislative clarity of the legal relation between employer and child servant could allow for mistreatment of child servants;*

1. In paragraph 79 of the Government report it states that the Children's Act protects the child against cruel treatment: "*while prohibiting cruel treatment of children by parents, guardians and teachers.*" However, whilst section 7 of the Children's Act forbids the practice of torture, it makes an exception in the case of beating "*in the interests of the child*": "*Provided that, the act of scolding and minor beating to the child by his father, mother, member of the family, guardian or teacher for the interests of the child himself shall not be deemed to violate the provisions of this section*".

What is meant by a *"minor beating"* is not defined.

2. Should the beating result in serious injury Chapter 9 of the Muluki Ain (on battery and assault) states that if hurt, injury or grievous hurt when imposed by the above mentioned persons:
*"while beating his ward using simple force for the benefit of the ward[child]himself shall not be held responsible for the result of his act"* (emphasis added)

3. Should the beating result in the death of the Child, Chapter 10 of the Muluki Ain Chapter 10 (On Death) section 6 states:
*"If death is caused while beating or doing something else for the benefit of the deceased by his teacher or guardian, he shall be punished with a fine of up to 50 Rupees"* (Emphasis added)

4. In article 152 of the government report, there is an admission that beating of children by employers is a serious problem. Whilst there are many causal factors attributable to the problem, the legal relationship between child servant and employer is undefined in Nepali Law. If, because of the age of the child worker, the employer is regarded as being a guardian of the child in its care, then beating to death *"for the benefit of the deceased"* is punishable as above.

## Recommendations

1. OMCT believes that all children must be given more effective protection from any form of physical or psychological violence and that those who inflict violence against children receive a sanction that reflects the extreme gravity of the crime.

2. We believe that the exception in the Children's Act should be removed and sanctions which reflect the seriousness of the crime be amended to both the Children's Act and the Muluki Ain.

3. Furthermore, current legislation has to be amended to ensure that the rights of child servants are expressed clearly and effective measures are taken to protect them from what is a serious crime and indeed, a serious problem in Nepal.

# Current Problems with Legislation and Practice of Torture

The current situation: Torture and other grave violations of human rights cannot be separated from the conditions under which the police work.

The police force is underfunded, its staff underpaid and poorly trained . Moral is generally low, the general public holding the police responsible for the worst abuses of the previous regime. The final report of the Mallik Commission, charged with investigating the crimes committed against the democracy movement, has been, according to local NGOs, *"effectively buried."*

The police have been on occasion been deliberately targeted during demonstrations, that has in turn developed into *"a them and us"* attitude on the part of the police and many sections of the public alike. The beliefs, values, behaviour, culture and historical precedents of the police have a direct bearing on torture generally, and the torture of children although less common, cannot be separated from this. The majority of police throughout all ranks believe torture is a necessary and sufficient condition for the gathering of evidence against *"criminals"*.

In informal interviews carried out by CVICT in 1992 interviews with 25 high ranking Police Officers ranging from assistant Police inspector to the inspector general of Police only one believed that evidence could be obtained without torture. A human rights training session for the Police based in Kathmandu took place to mark the Vienna human rights conference. But since that time there has been no training of this kind. This is in spite of promises given to the director of OMCT by the then Chief of Police, during an meeting with the Director, of OMCT in 1992 to organise regular human rights training.

The role of caste plays a role throughout society, however OMCT takes note of its influence only within its mandate. The vast majority of children who suffer violence at the hands of the authorities are low caste Hindus. The caste system whilst perhaps not as pervasive as its southern neighbour, runs however, extremely deep in the countryside. Members of low caste are often considered as less than human. The social consequences of ill-treatment,

or even the killing of a low caste child are markedly less than other castes.

## Legislative concerns

OMCT is concerned by certain aspects of the Children's Act:

1. *The definition of torture given in the Act does not appear to conform to the Covention on the Rights of the Child.*
2. *The light sanction for crimes against children generally and specifically torture, given the extreme gravity of the crime*
3. *The lack of provisions to protect children against torture and the lack of precision concerning preventative detention and police detention*
4. *The lack of effective rehabilitative measures for child victims of torture*

1. OMCT/SOS-Torture is concerned over the definition of Torture outlined in Section 7 of the Act to Provide for Safeguarding the Interests of Children 1992. It states:
*"Prohibition on torture or cruel punishment: no child shall be subjected to torture or cruel treatment."*
There is no explicit mention of mental torture or degrading treatment.

2. In Section 53 of the Children's Act "on punishment" where a person commits any offence under section 7, it states:
*"he shall be punished with a fine of up to 5000 rupees or with imprisonment for a term which may extend to one year or both"* [emphasis added].
OMCT is particularly concerned that the grave crime of torture of a child is punishable with a fine and that it has no bottom limit. Moreover, the sanction of a maximum of one year does not seem to in any way reflect the extremely serious nature of the crime.
The sanctions for other crimes committed against children are also laid out in Section 53 of the Act to Provide for Safeguarding the Interests of Children. OMCT is concerned by the lack of any minimum sanction. All punishments foresee fines and jail sentences of *"up to"* a given amount or time. This would appear to give enormous leeway to prosecuting judges and we are concerned that this may not effectively deter would-be offenders.
Furthermore, during the Committee Against Torture examination of the Nepal

Report, the experts expressed their concern that, to their knowledge, nobody had ever been prosecuted for the crime of child or adult torture in Nepal. This would appear to remain the case. In a recent case pursued by OMCT the guilty parties were simply transferred to a new district.

3. The Government report does not appear to detail with any precision provisions to protect children from torture and lacks precision concerning preventative detention and police detention.
OMCT considers that it is vital that the Nepali Government adopt immediate measures to end torture and ensure that the sanctions that exist against those who torture children are severe.

4. The Children's Act provides no provisions for the rehabilitation of children who have suffered Torture. The proposed bill to rehabilitate torture victims has particular weaknesses.
Victims of torture are severely traumatised after torture and sometimes unable to walk properly.
They are expected in the proposed law, to be able to make their complaints in district courts which are often days away over mountainous terrain. The claim must be lodged 15 day after the event and since there are regular allegations of manipulation of the release date by the authorities this provides for a loophole.
During a meeting, with the Director of OMCT, the Chief of Police outlined his concern over time limits to bring someone charged before a justice, it would appear that the same is relevent in this case.
Moreover, the torture rehabilitation act, even with its many flaws, has been delayed a great number of times.

## Recommendations

1. The definition of torture be amended.
2. That the sanction for the crime of torture be commensurate with the gravity of the offence.
3. Effective redress legislation be enacted
4. The authorities release Police training manuals to public scrutiny, a request which up to this point has been denied.
5. Technical assistance in human rights training from the U N Centre for Human Rights, should be considered.

# Concern for the treatment of mentally disturbed children

The Maluki Ain No 2 "On Medical Practice" sets out the provisions for the mentally disturbed Section 6 States.
"*A lunatic shall be put in chains and lodged inside a cell or a jail for the purpose of treatment, and treated from the hospital, if there is any, until he is cured. He shall be handed over to his relative if the latter undertakes to take proper care of him.*"

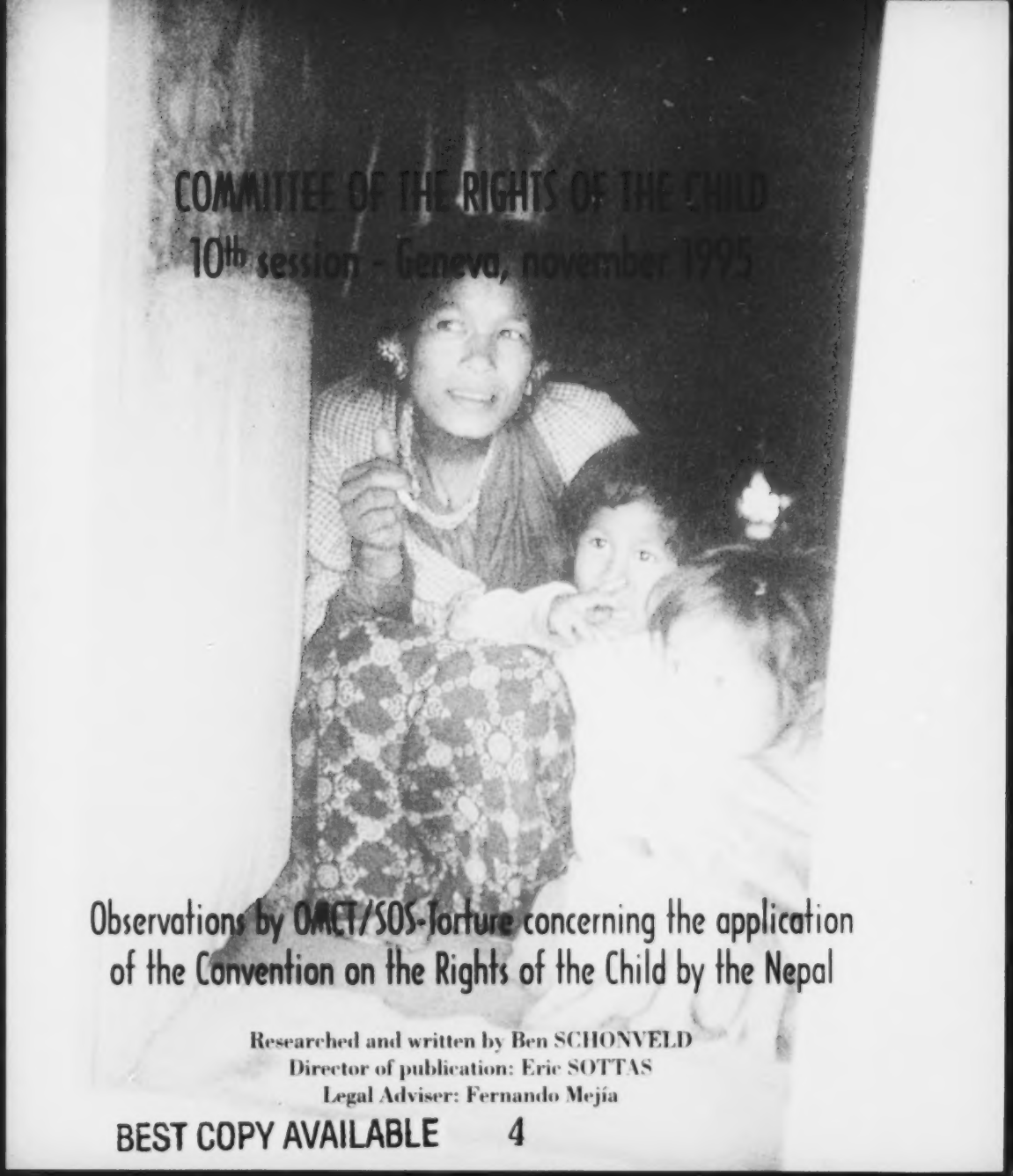
OMCT is particularly concerned by the legal position of orphaned children who may suffer from mental disturbance. Mentally disturbed people are routinely held in prison where prevailing conditions are less than conducive for a full recovery. Since these children are regarded as "difficult" they are unlikely to released into other homes for children.
It is also clear that the use of the word "*lunatic*" is in itself indicative of the attitude of the legislation toward persons suffering from an extremely debilitating condition.

Paragraph 15 of the Act to Provide for the Safeguarding the Interests of Children forbids the use of handcuffs and fetters but only as far as "*notwithstanding anything contained in existing laws…*"

Thus the mentally disturbed child has no protection from these measures.
This legislation was first critisised by OMCT during the 43rd Session of the Subcommission on the Prevention of Discrimination and Protection of Minorities under Agenda Item 10. Following a meeting with the Director of OMCT, in Nepal, in 1992, the then then Minister of Justice gave assurances that this law would be amended.

### Recommendations

OMCT would urge that the relevant section of the Muluki ain be amended and that children and other people suffering from like problems be given the full protection of the law.




# Observations by OMCT/SOS-Torture concerning the application of the Convention on the Rights of the Child by the Nepal

Researched and written by Ben SCHONVELD
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# Practice and legislation concerning Rape and the Girl Child

According to Asia Week one women in two million is raped in Nepal. The figures are based on Police figures. These figures can only suggest that there are serious reporting problems. Rape is a serious issue in Nepal, societal pressure means that in addition to poor legislative protection, women and girls are extremely reluctant to report crimes of this nature. CVICT reports that even when receiving rehabilitative treatment they are unwilling or unable to disclose the full extent of their treatment.

CVICT also reports in that detained women and girls are regularly subjected to sexual abuse which ranges from the use of vulgar language and gestures to sexual harassment, threats of rape and actual rape. Given the high incidence of child prostitution and the related risk of police detention, child prostitutes will be extremely vulnerable to this type of abuse.

The legislative provisions regarding rape are set out in the Maluki Ain No 2 (On Rape).

OMCT is concerned by several issues relating to these provisions.

1. *The legislation regards rape of prostitutes (including the girl child) as "adultery" and the sanctions for such a crime are derisory.*

2. *The definition for aiding and abetting of a rape is ill defined and the punishment is derisory*

3. *The lack of provision for boys*

1. Article (7) of the Maluki Ain No 2 (On Rape) states that in the:
*"case( any person) commits adultery in any manner with a prostitute without her consent and through the use of force, he shall be punished with a fine not exceeding 500 rupees or with imprisonment not exceeding 1 year"* (emphasis added)
OMCT is seriously concerned by the use of the word adultery - an act of sexual

violence against any person without their consent cannot, under any circumstances, be regarded as adultery. The use of the word adultery trivialises an extremely serious crime. The derisory punishment, which foresees no minimum limit, would thus, appear to be tacitly condoning an act of rape.
Since child prostitutes are extremely common in Nepal, and the government readily admits this in the report, this is of particular concern for the rights of the girl child. The punishment would seem to be aimed at an adult committing an act of adultery, not an attack on the physical and psychological integrity of a child.

2. The punishment for aiding and abetting a rape - to the extent of holding down the victim (other forms of aiding do not appear to have a punishment) bear a maximum (there is no minimum) of one year. Once again, there are similar contradictions to the one as described above, that a person aiding the rape of a child below 14 will be subject to a punishment of a maximum of 2 years.

3. As far as OMCT has been able to ascertain there is no legal protection for rape victims who are boys.

**Recommendations**

1. The government considers amending the relevant legislation to ensure that the authorities are not seen to be tacitly condoning acts of violence against the girl child and lending legislative support to the already very low status of prostitutes in particular and girls/women in general in Nepalese society.

2. That children are given equal protection under the law

3. That the crime of rape and aiding and abetting rape is extremely serious and sanctions in law should reflect this;

4. That the government enact legislation to ensure that the reporting of such a crime is possible in the presence of a female police officer

5. That the government consider this an issue for public concern and a public awareness campaign may be appropriate

# Serious Problems Concerning Children in the Laws to protect Forests

In Nepal there is considerable legislation to protect forests. The legislation gives wide powers to the forest officers. Whilst recognising the need to protect the environment the International Secretariat is particularly concerned by the measures adopted by the Forest Act (implemented 1992) which has serious implications for the rights of the child.

The powers given to officers combined with the often remote location of forest stations and the lack of any real sanctions against the officers, should they abuse their powers, means that they are able to exercise their powers with almost total impunity.

The forest employees have been regularly accused of extortion from local people caught collecting firewood. Those unwilling or unable to pay are often detained or beaten-up. Since it is women and children who have to collect firewood they are in a high risk situation

Legislative concerns about the Forest Act

1. *That an officer can arrest children for minor crimes without warrant*

2. *Under certain conditions the officer can shoot at a child attempting to run away*

3. *That officers acting in good faith are not held liable*

**Article 54 of the Forest Act states:**

(1) In case any forest employee or police Employee feels that any person has committed an offence which is punishable under this act or is about to do so, and that he may escape if he is not arrested, he may arrest such person without any warrant

(2) Furthermore the Forest or police Officer is empowered under Article 56: *"In case any person engages in Hooliganism in order to prevent the arrest within or outside the forest area of*

*an offender involved in an offence relating to forests under this act or to secure his escape after he is arrested, and a situation arises in which the offender is enabled to escape, so that there is a danger to the life of the person who makes the arrest himself, and there is no alternative but to use weapons, the employee deputed to protect forests may shoot below the knees."* (Emphasis added)

(3) Article 71 further allows for immunity for actions taken in good faith where it states:
"*Any government employee who has exercised in good faith the powers conferred on him by this act shall not be held personally liable.*"
OMCT notes that the crimes punishable by the above in this act include: the removal of forest products, cutting of trees or plants and trimming branches. As it is children who are often sent by their family to collect firewood this puts them at considerable risk.

**Recommendations:**

That the legislation be amended to bring into line with the Convention on the Rights of the Child.

# Children in detention and prison

OMCT/SOS-Torture is particularly concerned by

1. *The conditions of detention centres used for holding children*

2. *The holding of children (who have committed no crime) with their parents and the conditions they must endure*

3. *The lack of detail in the report concerning arrest procedure and detention of children*

1. Detention Centres are completely unsuitable for Children: holding pens for arrestees are usually built adjacent to the toilets. They are damp, dark and poorly ventilated completely unsuitable for the detention of minors. It is also clear that

detained children are routinely held with adults. This in clear contravention to article 37c of the Convention on the Rights of the Child

2. In Paragraph 179 of the Governments Report the government states that children whose parents are in prison and for whom no other alternative can be found will be sent to a children's home during the period of detention of their parents. This is clearly not the case for some.

In the Government report in paragraph 181 suggests the number of children detained with their parents is 63. Whilst the best interests of the child must be paramount, these children have committed no crime they live with the other prisoners - they are not held apart from adults. This is in clear contradiction to Article 37(c)

The conditions for these children are deplorable and are, once again in clear contravention with Article 37(c) which states that children deprived of their liberty,

"*shall be treated with humanity and respect for the inherent dignity of the human person*"

Prisons are insanitary, there is no provision for the education of these children, the medical facilities are inadequate. The food provided is inadequate and is normally supplemented by food provided by family. OMCT is particularly concerned for those who have no family to support their food intake.

The poor conditions endured by children in prison are unacceptable and lead to predictable outcomes. On January 27 1995 Phip Rani Limbu, a girl aged 5 died of an infection of the respiratory tract in the District Hospital in Dharan Eastern Nepal. Hospital Sources suggest that she was brought to the hospital only in the final stages of her illness. She had been living with her mother, serving a sentence for murder. Phip Rani Limbu began living in Jail when she was 18 months old.

OMCT is aware of the economic limitations faced by the Nepali authorities. But, children held with adults are at an extreme risk of mistreatment - indeed the government reports states that children in prisons can expect the same treatment from warders

Paragraph 151 of the Government report states:
"*Rehabilitation homes for children have yet to be built. As children are confined together with adults in jail the police are likely to be just as harsh with children as they are with adults.*"

In this respect OMCT notes that although the use of fetters handcuffs etc. are forbidden under the act to provide for safeguarding the interests of children Article 15. given the above and the admission in paragraph 343 that the provisions of the above act have yet to be implemented OMCT is gravely concerned for the physical and psychological integrity of children detained in prison for whatever reason.

**Recommendations**

1. OMCT insists that children detained with their parent enjoy all the rights stipulated in the Convention on the Rights if the Child.

2. Technical assistance from the UN Center for Human Rights would seem to be appropriate.

## Concerns over sanctions against child offenders

The Childrens Act provides that a child aged between 10 - 14 can be imprisoned to a maximum of 6 months. In the light of the conditions described above and the total absence of rehabilitative provisions. OMCT wonders to what extent any child can be incarcerated in Nepal's jails in their current state without breaking a great number of the articles of the Convention on the Rights of the Child.
Moreover, Section 11 of the Children's Act provides that children between the age 14 and 16 can be imprisoned for crimes corresponding to half the duration of that of adults. We are particularly concerned that this means that children as young as 14 could be jailed for ten years in the case of murder.

Furthermore in terms of the Government report OMCT would suggest that there is insufficient in terms of precision of the rules governing the arrest and subsequent

procedural issues following that arrest of children.
The Report also lacks sufficient detail on rehabilatative measures
OMCT/SOS-Torture is also concerned by the lack of action take to set up children's courts as is stipulated by article 40 of the Convention on the Rights of the Child

**Recommendations**

- Take immediate steps to ameliorate the living conditions of child offenders and ensure they are separated from adults

- That the government address the issue of the heavy sentencing of child offenders

- That the government provide more detail of arrest procedure

- That the government take effective action to ensure the establishment oc Children's courts

# Tibetan Refugees

OMCT has regularly documented cases of rafoulement of Tibetans to China where they face torture. Appendix 1 supplied by the Tibet Information Network documents typical cases faced by children. The government states in Paragraph 328 that "*much of what the government can do for the refugees depends on the amount of foreign aid that is donated.*" It details in Paragraph 327 the provisions made for the Bhutanese refugees. Whilst OMCT welcomes this treatment we are gravely concerned over the plight of Tibetan Refugees who would appear to the object of discrimination.

Nepal has ratified the Convention Against Torture. Article 3 states:
"*No state party shall expel, return or extradite a person to another state where there are substantial ground for believing that he would be in danger of being subjected to torture.*"

**Recommendations:**

We would, therefore, recommend that the government of Nepal consider signing the relevant international instrument on Refugees

Take immediate measures to ensure that the situations described in Appendix one are not repeated.

# Child Soldiers

In the report of the government it states that the legal age for recruitment into the army is 18 and which is to be welcomed. OMCT is however, concerned over the military tradition that exists between the British Army and the Gurkha Regiments which come from Nepal and serve with the British Army. OMCT would like to know at what age the Gurkhas enter the British Army which has a different minimum age of recruitment.

# Concluding observations of the UN Committee on the Rights of the Child: Nepal

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150. The Committee considered the initial report of Nepal (CRC/C/3/Add.34) at its 301st to 303rd meetings (CRC/C/SR. 301-303), held on 29 and 30 May 1996 and adopted* the following concluding observations:

## A. Introduction

151. The Committee expresses its appreciation to the Government of Nepal for the submission of its initial report, its written information in reply to the questions set out in the list of issues (CRC/C.12/WP.3) as well as the additional information provided by the State party during the dialogue with the Committee during which the representatives of the State party indicated in a self-critical manner not only the policy and programme directions, but also the difficulties encountered during implementation of the Convention.

## B. Positive aspects

152. The Committee notes the efforts made by the Government in the field of law reform, especially the adoption of a new Constitution - with a special section to ensure the rights of the child - and the Children's Act which covers many areas concerning children's rights. The Committee notes with appreciation that the Government is willing to review its present legislation including in relation to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as well as a system of compensation to the victims. It also welcomes the fact that the delegation has confirmed the Government's willingness to ratify International Labour Organization Convention No. 138.

153. The Committee welcomes the Government's efforts to establish mechanisms to deal with children's issues and the question of children's rights, in particular the Central Child Welfare Board and the District Child Welfare Boards. It also notes with satisfaction the recent establishment of a National Council for Women and Child Development and of a Child and Women Development Section in the National Planing Commission Secretariat.

154. The Committee also notes with appreciation the openness of the State

* At the 311th meeting, held on 7 June 1996.

party to international advice and technical assistance to ensure full implementation of the provisions of the Convention on the Rights of the Child, including in the fields of discrimination, child labour, child trafficking, sale of children, and the administration of juvenile justice.

155. The Committee notes with satisfaction that the State party has adopted a National Plan of Action and has formulated a 10-Year National Programme of Action for Children and Development for the 1990s.

156. The Committee welcomes the readiness of the State party to collaborate with the non-governmental organisation community, including children's organizations, which was reflected in the drafting process of the Government's report and in the presence during the dialogue of a child representative of a non-governmental organisation.

157. The Committee welcomes the decision of the Government to hold a press conference in Nepal prior to the consideration by the Committee of its initial report, as a means to create awareness in the public at large of the international commitments undertaken to promote and protect children's rights. It is further encouraged by the statement by the delegation that it will present the concluding observations of the Committee in another press conference upon return to Nepal.

### C. Factors and difficulties impeding the implementation of the Convention

158. The Committee notes that Nepal is one of the poorest countries of the world where more than half the population lives in absolute poverty which mainly affects the most vulnerable groups and hampers the enjoyment of children's rights. This reality, added to the foreign debt and the debt servicing, represents serious difficulties affecting the degree of fulfilment of the Government's obligations under the Convention.

### D. Principal subjects of concern

159. The Committee is concerned at the inadequate measures adopted to ensure that national legislation fully conforms

with the principles and provisions of the Convention. The Committee notes in particular the lack of conformity of legislative provisions concerning non-discrimination including in relation to marriage, inheritance and parental property, torture and corporal punishment. The Committee is also concerned about the gap between existing legislation and its practical implementation.

160. The Committee expresses its concern that the State party has not fully taken into account in its legislation and policy-making the general principles of the Convention: article 2 (principle of non-discrimination), article 3 (principle of the best interests of the child), article 6 (right to life, survival and development) and article 12 (respect for the views of the child).

161. The Committee is particularly concerned at the insufficient measures adopted to ensure the effective implementation of the principle of non-discrimination. It notes the persistent discriminatory attitudes towards girls, as reflected in the prevailing son preference, the persistence of early marriages, the notably lower school attendance of girls and their higher drop-out rate. It also is concerned at the different marriage age of girls and boys which is not in conformity with article 2 of the Convention. The Committee is further concerned at the caste system and traditions such as the deuki, kumari and devis. The Committee also expresses its concern at section 7 of the Children's Act which allows parents, members of the family and teachers to beat a child "*if it is thought to be in the interest of the child*", as well as at the fact that, as recognized in the State party's report, the views of the child are unlikely to be respected. The persistence of such traditional practices and attitudes seriously hampers the enjoyment of the rights of the child.

162. The Committee is concerned at the slow pace of the State party in establishing an efficient coordination mechanism between relevant ministries, as well as between central and local authorities, in the implementation of policies for the promotion and protection of the rights of the child.

163. The Committee is concerned at the insufficient attention paid to systematic and comprehensive data collection, iden-

tification of appropriate indicators, as well as to a monitoring mechanism for all areas covered by the Convention and in relation to all groups of children, including children belonging to minorities, to lower castes, children of very poor families, children in rural areas, disabled children, children placed in institutions, children victims of sale, trafficking and prostitution and children living and/or working on the streets.

164. As regards the implementation of article 4 of the Convention, the Committee is concerned about the failure of the Government to accord priority to the implementation of economic, social and cultural rights of children to the maximum extent of available resources. In the view of the Committee, insufficient attention has been paid to the most disadvantaged groups, in both rural and urban areas.

165. The Committee is concerned at the insufficient steps undertaken to ensure birth registration of children, particularly those living in remote areas, and to the adverse effects arising therefrom for the enjoyment of their fundamental rights.

166. The Committee is worried by the high rate of school drop-outs, especially among girls living in rural areas, and the high incidence of child labour. It is also concerned by the difficulties encountered by children living in rural and remote areas and disabled children in securing basic services, such as health care, social services and education.

167. In the light of article 28, the Committee wishes to express its deep concern about the fact that primary education is not compulsory for all children. It is also concerned by the high level of illiteracy among children and adults.

168. The Committee is concerned that appropriate measures have not yet been taken to effectively prevent and combat any form of ill-treatment and corporal punishment of children within the family. It is seriously worried about the absence of adequate legislation and mechanisms designed to ensure the recovery and reintegration of child victims in the light of article 39 of the Convention.

169. The large and growing number of children who, owing to rural exodus, extreme poverty, and violence and abuse

within the family, are forced to live on the streets, are deprived of their fundamental rights and are exposed to various forms of exploitation, is a matter of deep concern.

170. The Committee is worried about the fact that a large number of children are involved in child labour, including in the informal sector, particularly as domestic servants, in agriculture and in the family context.

171. In view of the scale of the problem of sale and trafficking of children, especially girls, the Committee is deeply concerned about the absence of a specific law and policy to combat this phenomena.

172. The Committee is concerned by the increasing phenomenon of child prostitution that affects in particular children belonging to the lower castes. It is worried about the absence of measures to combat this phenomenon and the lack of rehabilitation measures. The Committee is also concerned at the inadequate measures taken to address the situation of children addicted to drugs.

173. The situation of the administration of juvenile justice and in particular its compatibility with articles 37 and 40 of the Convention, as well as other relevant standards such as the "*Beijing Rules*", the "*Riyadh Guidelines*" and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, is a matter of concern to the Committee. It is concerned, inter alia, about the too low age of criminal responsibility, about the provision of the Muluki Ain No. 2 that allows mentally ill children to be put in jail and chained, and the legal definition of torture which is not in compliance with article 37 (a) of the Convention.

## E. Suggestions and recommendations

174. The Committee recommends that the State party undertake, in all necessary areas, adequate legal reform to ensure full conformity of its legislation with all the provisions of the Convention, in particular that it take fully into account the Convention's general principles (arts. 2, 3, 6 and 12).

175. In order to effectively combat persisting discriminatory attitudes and negative traditions affecting girls, the Committee encourages the State party to

launch a comprehensive and integrated public information campaign aimed at promoting children's rights within the society, and particularly within the family. The Committee also recommends that the State party ensure specific training on the Convention for professional groups working with and for children, including teachers, social workers, health personnel, judges and law enforcement officials. International cooperation with, inter alia, the Centre for Human Rights and the United Nations Children's Fund could be sought to this effect.

176. The Committee is of the opinion that greater efforts are required to make the provisions and principles of the Convention widely known and understood by adults and children alike, in the light of articles 12 and 42 of the Convention. It encourages the State party to further increase public awareness of the participatory rights of children, as well as to consider incorporating the Convention in the school curriculum.

177. The Committee recommends that the State party take all necessary steps to strengthen coordination between the different governmental mechanisms involved in children's rights, at both central and local levels, and ensure close cooperation with non-governmental organizations.

178. The Committee further recommends that the State party undertake to gather all necessary information on the situation of children in the various areas covered by the Convention and in relation to all groups of children, including those belonging to the most vulnerable groups. It also suggests that a multidisciplinary monitoring system be established to assess the progress achieved and difficulties encountered in the realization of the rights recognized by the Convention at the central and local levels, paying particular attention to the adverse effects of economic policies on children. Such a monitoring system should enable the State party to shape appropriate policies and to combat prevailing social disparities and traditional prejudices. The Committee also encourages the State party to consider the establishment of an independent mechanism, such as an Ombudsperson or a human rights commission, to monitor the realization of the rights of the child and to deal with individual complaints relating thereto.

179. With respect to the implementation of article 4 of the Convention, the Committee recommends that particular attention be paid to the need to ensure budget allocations, to the maximum extent of available resources, to implement economic, social and cultural rights in the light of the principles of non-discrimination and the best interests of the child. International cooperation resources should be channelled towards the realization of children's rights and efforts should be pursued to reduce the negative impact of foreign debt and debt servicing on children.

180. Children's birth registration should be given priority to ensure that every child is recognized as a person and enjoys his/her full rights. The Committee encourages further steps to ensure the birth registration of children, including the establishment of mobile registration offices and registration units in schools.

181. In the light of article 2 of the Convention, the Committee also recommends that the State party take all necessary measures to reduce the drop-out rate of girls in rural and urban areas and to prevent their involvement in child labour or prostitution, and to reinforce the access to basic services (health, education and social care) for children in rural areas and for disabled children throughout the country. The Government should in particular take concrete measures, including awareness campaigns to change negative attitudes, to protect children belonging to the lowest castes from any form of exploitation.

182. In order to promote the protection of refugee children, the Committee encourages the State party to consider ratifying the 1951 Convention relating to the Status of Refugees.

183. In the light of article 19 of the Convention, the Committee further recommends that the Government take all appropriate measures, including of a legislative nature, to combat any form of ill-treatment and sexual abuse of children, including within the family. It suggests, inter alia, that the authorities gather information and initiate a comprehensive study to improve the understanding of the nature and scope of the problem and set up social programmes to prevent all types of child abuse and neglect.

184. The Committee further recommends that firm measures be taken to ensure the right of survival of all children in Nepal, including those who live and/or work in the streets. Such measures should aim at the effective protection of children against any form of exploitation, particularly child labour, prostitution, drug-related activities and child trafficking and sale.

185. In regard to the problem of child labour, the Committee suggests that Nepal consider ratifying ILO Convention No. 138 concerning the minimum age for admission to employment and review all relevant national legislation with a view to bringing it into conformity with the Convention on the Rights of the Child and other relevant international standards. Child labour laws should be enforced, a system of inspection established, complaints investigated and severe penalties imposed in case of violation. Special attention should be paid to the protection of children involved in the informal sector, including as domestic servants. The Committee suggests that the Government consider seeking cooperation from ILO in this area.

186. In order to effectively combat intercountry trafficking and sale of children, the Committee strongly suggests that Nepal take all appropriate measures, including legislative and administrative ones, and encourages the State party to consider adopting bilateral measures to prevent and eliminate such phenomena. Awareness campaigns should be developed at the community level and a thorough monitoring system should be established.

187. In the field of the administration of juvenile justice, the Committee recommends that legal reform be pursued and take fully into account the Convention on the Rights of the Child, in particular articles 37, 39 and 40, and other relevant international standards in this field, such as the "*Beijing Rules*", the "*Riyadh Guidelines*" and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Particular attention should be paid to raising the minimum age of criminal responsibility, the establishment of juvenile courts, the enforcement of existing legislation, the prevention of juvenile delinquency, alternatives to deprivation of liberty and institutional care, the protection of the

rights of children deprived of liberty, respect for fundamental rights and legal safeguards in all aspects of the juvenile justice system, and the full independence and impartiality of the juvenile judiciary. The law permitting the placement of mentally disturbed children in jails should be reviewed as a matter of urgency.

188. The Committee suggests that a technical assistance programme be developed with the Centre for Human Rights, including in the areas of law reform in the field of children's rights and training of professionals working with children. Special attention should be paid to training programmes on the relevant international standards, in particular for judges, law enforcement officials, correctional officers and social workers. Attention should also be given to awareness and information campaigns on the Convention on the Rights of the Child. Moreover, consideration should be pursued in relation to the establishment of a commission on human rights or other independent mechanisms to monitor the realization of children's rights issues.

189. In the light of the areas of concern identified by the Committee and the recommendations made, the Committee suggests that the Government consider seeking technical assistance from relevant international organizations, including the International Labour Organisation, the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the World Health Organisation. Consideration may be given to the establishment of task force of the international organizations present in the country with view to promoting and protecting the rights set forth in the Convention. Committee also encourages the international community to assist the State party in its current efforts.

190. The Committee encourages the State party to disseminate widely its initial report, the summary records of the discussion and the concluding observations adopted by the Committee following its consideration of the report. The Committee would like to suggest that these documents be brought to the attention of Parliament as a means of ensuring a follow-up to suggestions and recommendations made by the Committee. ⌟

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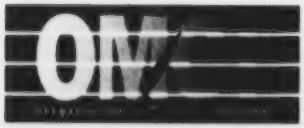


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